

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOHN OLIVER, JR.	:	: CIVIL ACTION
v. _____	:	
COURT OF COMMON PLEAS, et. al. ___	:	NO. 07-cv-0267

MEMORANDUM AND ORDER

On January 22, 2007, petitioner filed the above-captioned petition in this court seeking Habeas Corpus relief pursuant to 28 U.S.C. §2254. Petitioner has filed a previous petition in this court pursuant to 28 U.S.C. §2254, at 03-cv-5017, which attacked the same conviction and/or sentence, and which was dismissed for procedural default. Procedural default occurs when a §2254 petitioner in this court previously had the right to file an appeal of the conviction and/or sentence involved in a state court, or the right to file an application for post-conviction relief from the conviction and/or sentence involved in a state court, concerning specific issues, but the petitioner did not, in fact, file such an appeal or application, and some procedural rule of the state court dictates that the time has passed for such a state filing. A case dismissed in a federal district court for procedural default is considered a dismissal with prejudice. Villot v. Varner, 373 F.3d 327 (3d Cir. 2004); Holloway v. Horn, 355 F.3d 707 (3d Cir. 2004). In such circumstances, the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. §§2241- 2266, provides in relevant part that before such a second or successive petition is filed in the district court, the prisoner must first get permission to file in the district court from the circuit court, pursuant to 28 U.S.C. §2244(b)(3)(A), and that without such circuit permission, the district court lacks subject matter jurisdiction to consider such a habeas petition. Villot v. Varner, 373 F.3d 327 (3d Cir. 2004); Holloway

v. Horn, 355 F.3d 707 (3d Cir. 2004); Jones v. Morton, 195 F.3d 153 (3d Cir. 1999); Hull v. Kyler, 190 F.3d 88 (3d Cir. 1999); In re Minarik, 166 F.3d 591 (3d Cir. 1999); Christy v. Horn, 115 F.3d 201 (3d Cir. 1997).

Accordingly, this 16th day of February, 2007, it is hereby **ORDERED** that the petition is referred to the United States Court of Appeals for the Third Circuit for consideration as a second or successive petition.

s/William H. Yohn Jr.

WILLIAM H. YOHN JR., U.S. District Judge